

46 Am. Jur. 2d Judges § 34

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Judges

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V. Powers and Duties

B. Successor Judges

§ 34. Successor judge vacating judgment

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[Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor, 51 A.L.R.5th 747](#)

A successor judge who takes office during the duration of the predecessor's term does not have the authority to vacate a judgment entered by the predecessor.¹ A successor judge cannot on unchanged facts enter an order vacating a final decree of a predecessor judge, since a successor judge may not correct errors of law committed by the predecessor.² However, a successor judge may vacate a judgment entered by the predecessor where new matter introduced before the successor judge indicates that an injustice has been done.³

The rule in most federal courts is that where a federal district judge, while a case is on the judge's calendar, has rendered a decision and makes a judicial order in the case, another judge of the same district court, to whom the case is thereafter transferred, should respect and not overrule such decision and order.⁴

Under a statute prescribing a fixed period of time within which a judgment may be vacated, the power to vacate the judgment of a prior judge may be validly exercised within the statutory period by a successor judge, or even by another judge of the same court.⁵

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Footnotes

- 1 State ex rel. Harp v. Vanderburgh Circuit Court, 227 Ind. 353, 85 N.E.2d 254, 11 A.L.R.2d 1108 (1949).
- 2 Able Outdoor, Inc. v. Harrelson, 341 N.C. 167, 459 S.E.2d 626 (1995).
- 3 Greene v. State Farm Fire & Casualty Co., 224 Cal. App. 3d 1583, 274 Cal. Rptr. 736 (1st Dist. 1990).
- 4 Stevenson v. Four Winds Travel, Inc., 462 F.2d 899, 20 A.L.R. Fed. 1 (5th Cir. 1972).
- 5 Department of Public Works and Buildings v. Legg, 374 Ill. 306, 29 N.E.2d 515 (1940).

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